

Application Serial No. 10/777,268
Reply to Office Action dated March 9, 2007

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REMARKS/ARGUMENTS

In an Office Action dated March 9, 2007, the Examiner set forth two restriction requirements in connection with the claims filed in the above-identified U.S. patent application. Initially, the Examiner set forth a restriction between Group I identified as claims 1-14, drawn to a dishwasher, classified in Class 134, subclass 111 and Group II identified as claims 15-20, drawn to a method of operating a dishwasher, classified in Class 134, subclass 10. The Examiner argues that the process as claimed can be practiced by another and materially different apparatus such as one not requiring an opening provided in the bottom wall of the tub. The Applicant respectfully submits that it would not be a burden on the Examiner to examine both the method and apparatus claims presented in this case, particularly given that the method requires many of the particulars of the apparatus. Regardless, the Applicant acknowledges the Examiner's right to make this restriction such that the Applicant will elect, without traverse, to proceed with prosecution of Group I, claims 1-14.

The Examiner also set forth a species restriction in the case. More specifically, the Examiner indicates the existence of two patentably distinct species, namely, Species (a) identified by Figure 3 and Species (b) identified by Figure 14. The Examiner indicates that the species are independent or distinct because they are unconnected in design, operation and effect. This is simply not the case and, for at least the reasons set forth below, withdrawal of this species restriction as being improper is requested.

As set forth under § 806 of the M.P.E.P., one requirement for a proper species restriction is that the claimed "species" are mutually exclusive. Although the Examiner is correct in that Figure 3 teaches an overflow tube arrangement and Figure 14 identifies a pressure relief system, these arrangements are not mutually exclusive. In fact, page 26, lines 19-22 clearly disclose that the pressure relief system can either replace or be used in combination with the overflow tube. Therefore, the pressure relief system and the overflow tube arrangement are clearly not "unconnected" such that a species restriction as set forth in the Office Action is improper.

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As the Applicant is still required to elect a single species for prosecution on the merits, the Applicant elects, with traverse, Species (b). The Applicant further submits that claims 1-14 are readable on Species (b).

Based on the above remarks, the Applicant respectfully proposes that the present invention is now in proper condition for examination. If the Examiner should have any additional questions or concerns regarding this matter, he is cordially invited to contact the undersigned at the number provided below in order to further prosecution.

Respectfully submitted,


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